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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 24th MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 12 February 1992, at 3 p.m.

Chairman: Mr. NASSERI (Iran)

later: Mr. SOLT (Hungary)

CONTENTS

Statement by Mr. Kozyrev, Minister for Foreign Affairs of the Russian Federation

Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

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* The summary record of the second part of the meeting appears as document E/CN.4/1992/SR.24/Add.1.

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CONTENTS (continued)

(a) Torture and other cruel, inhuman or degrading treatment or punishment

(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(c) Question of enforced or involuntary disappearances

(d) Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (continued)

The meeting was called to order at 3.15 p.m.

STATEMENT BY MR. KOZYREV, MINISTER FOR FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION

1. Mr. KOZYREV (Russian Federation), Minister for Foreign Affairs, said it was encouraging to see that, despite the diversity of political systems, traditions, customs and religions, a common culture of human rights was emerging as the yardstick by which to measure how far a State was civilized.

2. The recent meeting of the Security Council had shown that Russia, while remaining a great Power, was becoming a normal country, contributing to that human rights culture and seeking to promote fair international cooperation and ensure a decent life for its people rather than pursuing its super-Power ambitions or curbing liberal thinking and creative endeavour.

3. As the successor to the USSR, the Russian Federation had undertaken to fulfil its international obligations, including those relating to human rights. There had been a time when a signature under an international instrument had meant nothing for the Soviet system. With perestroika, international and European standards had begun to assume their full importance, but the country had still clung very strongly to socialism. Now, democracy had triumphed over totalitarianism and international human rights standards had become a very concrete reality corresponding to domestic interests. On the basis of those standards, the Russian Federation aimed to build a new system with democratic institutions. It was endeavouring to transform all State institutions so that they would become the guarantors of human rights and to make a return to totalitarian ideology impossible. But there were still dangers. Objective and subjective difficulties were being compounded by a new insidious danger capable of disguising itself and taking different forms, especially discontent, which inflamed passions and which also found expression in the rhetoric of those pseudo-patriots whose appeals to narrow nationalism, xenophobia and anti-Semitism ultimately reflected a yearning for totalitarianism, whether communist or Fascist. However, there could be no genuine national self-expression without respect for all individuals, whatever their language, religion or colour of skin. The Russian Federation, having broken away from totalitarian obscurantism, was rediscovering the path of democracy.

4. Human rights were natural and universal. It was not true that they were merely Western values, an excuse made by some to cover up violations, as had been done in the Soviet Union. But it was a fact that the Western countries had progressed further in implementing those fundamental and universal rights and the Russian Federation now had to catch up and learn the difficult art of democracy and freedom. It had to begin by examining the human rights situation in its territory and acknowledging the criticisms and views of other States. The support given to democracy through "interference" by the international community had enabled the Russian Federation to free itself from totalitarianism without too many casualties. People in various countries, Amnesty International and the Helsinki Federation were to be thanked for their support over many years for those who had defended the cause of human rights in the Soviet Union. Today, the establishment of democracy in Russia called for substantial legislative, economic and administrative changes.

5. On 30 January 1991, President Yeltsin had granted pardons to the last 10 political prisoners. That was a first step, but further efforts were needed to remedy practices that gave rise to violations of human rights, such as registration with the local police and restrictions on freedom of movement, as well as the dramatic situation prevailing in the army and in prisons, not to mention social problems, poverty and the plight of refugees caught up in interethnic conflicts. The Russian Federation would need the international community's full cooperation to resolve those problems. It was prepared to accede to all the agreements relating to refugees and was confident that humanitarian organizations such as the Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross would assist it in taking full advantage of the international community's experience in that area.

6. While United Nations activities in the field of human rights were highly appreciated, it must be recognized that the Organization had not fully adjusted to the new realities. Attention should now be given to establishing effective mechanisms to implement all the recognized principles and incorporate standards of human rights in States' domestic policies. The effectiveness of the international supervisory mechanisms in the human rights field should also be enhanced and new ones created where necessary. In that connection, the Russian Federation believed that the idea of developing special mechanisms for the Commission to respond promptly to emergency situations deserved close attention. It hoped, moreover, that the World Conference on Human Rights would help to establish measures to promote human rights, monitor their implementation and build confidence. In that regard, the Russian Federation suggested that action should be taken on Mr. Sakharov's proposal to create, under United Nations auspices, an independent body composed of persons of the highest moral standing from all parts of the world with the authority to consider the human rights situation in any country and publicize its conclusions widely. To make States fully accountable for their policies, a system should be established rendering them liable to sanctions (possibly of an economic nature) that would be more effective than just moral or political condemnation when they failed to respect human rights. In addition, greater use could certainly be made of preventive diplomacy to preclude large-scale violations of human rights. With regard to free elections, which were the quintessence of democracy, it might be useful, for example, to appoint a special rapporteur to monitor the electoral process and democratic safeguards in particular countries and report thereon to the Commission. Clearly, the United Nations and its Security Council had still not utilized their full potential in the field of human rights. Lastly, the Russian Federation believed that it was time to reject one-sided criteria when deciding on measures to combat flagrant and systematic violations of human rights. Thus, while it recognized Israel's right to exist and live in security, it condemned its policy of building settlements in the occupied territories; and while it welcomed the reforms in South Africa, it looked forward to the disappearance there as soon as possible of all vestiges of apartheid.

7. The Russian Federation hoped that the Commission, at its current session, would be able to adopt a declaration on minorities. In that regard, he recalled that one article of the Russian Declaration on the Rights and Freedoms of the Individual was devoted to national minorities. The Russian Federation would be guided, in considering that matter, by the law on the

rehabilitation of oppressed peoples and by universal human rights standards. Likewise, it would continue to raise the question of guaranteeing the fundamental rights of Russian people throughout the world.

8. Russia intended to pursue the same policy both within and outside its borders and therefore could not accept the fact that human rights were being seriously violated in other countries. The Supreme Soviet of the Russian Federation had recently held its first hearings on the human rights situation in a number of countries and would continue to monitor that question. The Russian Federation believed that it was necessary, moreover, to support the efforts of non-governmental organizations drawing attention to human rights violations throughout the world.

9. Noting that the Security Council had recently discontinued its debate on what international relations should be in the post-confrontation era in order to focus specifically on the establishment of a new world order based on democracy, international law and respect for human rights, he thought that it might be useful for the Commission to review its agenda, which was still framed in terms that dated back to the period of ideological confrontation.

10. In conclusion, he wished to remind the Commission that while it was discussing the principles enshrined in the Universal Declaration of Human Rights and the International Covenants on Human Rights, ordinary people in many countries throughout the world were continuing to suffer simply because they believed in those principles. The international community could not ignore their sufferings and had a duty to protect their fundamental rights.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued)

(E/CN.4/1992/13, 14, 15, 16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 20, 62 and 63; E/CN.4/1992/NGO/4, 9, 17, 20 and Add.1 and 22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29, 30 and Add.1-4; A/46/46, 618 and Corr.1 and 703; A/RES/46/110)

11. Ms. BECK (World Movement of Mothers), referring to the work of the Working Group on Enforced or Involuntary Disappearances and the draft declaration on the protection of all persons from enforced disappearance, congratulated those countries and organizations which had already endorsed the conclusions in the report. The World Movement of Mothers wished, nevertheless, to make a contribution regarding a problem that did not appear to have been raised. If the draft declaration reaffirmed the recognition of

the inherent dignity of all members of the human family and their equal and inalienable rights as being fundamental to freedom, justice and peace throughout the world, why was it that some countries seemed to be doing nothing in their own territory to fight practices contrary to those principles? There were, for example, young single mothers, abandoned by their partners, who were living in fear in Geneva because they knew that their lives would be at risk if they returned to their country. Their only mistake was to have kept the child they had been pregnant with, thereby attracting general scorn. In caring for those young women, helping them to adapt and giving them training and financial independence through work and studies, the aim was not to encourage the situation of the single mother but to try to remedy the injustice of present-day morality whereby only the woman was made to pay the price of motherhood. The dignity of being a mother and the existence of a child were values that deserved to be fully respected. The World Movement of Mothers therefore called on the Commission to study that problem in the context of a working group. The right to freedom, security and the recognition of human dignity would thus be made all the more credible.

12. Mr. LOREDO (International Association for the Defence of Religious Liberty) said that the decision taken by the Commission, at its forty-seventh session, to send a special representative to Cuba to investigate the human rights situation had been welcomed with joy by the great majority of Cubans. The Cuban Government's refusal to receive the Special Rapporteur was further evidence of the gravity of the situation in that country. On that occasion, human rights advocates in exile had been able to transmit numerous reports and charges to the Special Rapporteur. Those reports cited cases of detention, torture, cruel and degrading treatment and disappearances and killings perpetrated by the regime. Many of the victims were found to have been persecuted because of their religious beliefs or ideological convictions. The reports also referred specifically to the problem of people who had disappeared at sea.

13. The list of violations noted by the special representative of the Secretary-General in his report on the situation of human rights in Cuba was thus continuing to lengthen. Violations of human rights in Cuba derived implicitly from the country's legislation. The 1976 Constitution, for example, stipulated in article 61 that none of the freedoms granted to citizens could be exercised contrary to the interests of the socialist State, a provision that effectively legitimized repression on religious or ideological grounds.

14. Violations of human rights had worsened since the second half of 1991 and the repression had been particularly harsh against dissidents, human rights advocates and the Catholic Church. The death penalty, moreover, had been reactivated. One Cuban citizen, a practising Catholic and leader of the "Liberación" movement, had been violently attacked in his home by a paramilitary group. Reference should be made in that regard to the creation of rapid action brigades, armed by the Government itself, whose methods had been denounced at the 78th plenary assembly of the Episcopal Conference of Cuba. Since then, the bishops had been living in fear of reprisals. The mother of one opponent of the regime and other family members had been beaten in their home at Havana. The poetess Maria Elena Cruz Varela, a champion of the cause of human rights, had also been attacked by the brigades and had

later been sentenced as a common criminal and imprisoned with other women held for ordinary crimes. Mention could furthermore be made of the cases of Catholic activists who had joined the "Liberación" movement but had never been found guilty of any violent or illegal action, and of numerous other cases of torture and murder among the population and in prisons. The special representative was himself in possession of reports giving details of countless specific cases.

15. The newspaper Granma, the official organ of the Cuban Communist Party, and Cuban television had of late resumed their attacks against the Catholic Church, and in particular against the bishops, accusing them of encouraging political opposition in Cuba with the support of the CIA. Accusations had also been made against human rights advocates, suggesting that a large-scale campaign of reprisals was imminent. The reactivation of the death penalty posed an even more serious threat. One convicted person had recently been executed and two other persons who had tried to escape from the country in January were liable to the death penalty. The International Association for the Defence of Religious Liberty was in possession of a list containing the names of more than 2,000 people who had been shot by the regime, and that figure was undoubtedly much lower than the real number involved. He feared a new wave of executions that would be the prelude to a blood bath throughout the country. Numerous reports containing well-documented charges had been handed to the special representative appointed to monitor the human rights situation in Cuba and it was unfortunately impossible to cite all the known cases in detail.

16. The International Association for the Defence of Religious Liberty called on the Commission to accord the greatest possible attention to the situation prevailing in Cuba and urged that every possible step should be taken to restore justice and peace in that country. The Association also hoped that it could count on the solidarity of all the representatives of Governments and non-governmental organizations attending the current session.

17. Ms. BARNES de CARLOTTO (International Movement for Fraternal Union among Races and Peoples) said that as she had done each year, in her capacity as president of the Grandmothers of the Plaza de Mayo Association, she wished to report on the situation of children sequestered in Argentina between 1976 and 1983 for political reasons and to draw the international community's attention to the human rights violations perpetrated against hundreds of juveniles.

18. Those children had grown up in the 15 years since 1976 but for the most part they remained in the hands of assassins and torturers. They were still living in captivity, reduced to slavery and kept under submission and in ignorance. Meanwhile, impunity had been granted.

19. Since the restoration of the constitutional system in Argentina and the trials of members of the military junta and police chiefs, the perpetrators of very serious human rights violations had enjoyed impunity following the adoption of a number of acts and decrees (Act No. 23492, known as "de punto final", which established a system for calculating the prescription period for criminal prosecution, and Act No. 23521, known as "de obediencia debida", which limited the application of sentences for human rights violations to senior army officers and in effect amnestied persons directly

responsible for murders, enforced disappearances and torture). However, crimes connected with the disappearances of juveniles were specifically excluded from the scope of those two amnesty laws. Yet, while there was no de jure impunity, there was certainly de facto impunity.

20. Her association had recorded 206 cases of disappearances involving juveniles (68) and pregnant women (138) between 1976 and 1983. The addition of figures from other sources resulted in a total of 217 disappearances of juveniles under 17 years of age for that period. Eight juveniles had been released, seven had been killed and 50 had been found by her association, three of them children born in captivity. Those were only the officially reported cases and the actual number was certainly much higher.

21. There was considerable evidence of a deliberate policy whereby captured juveniles had been sent to other families and pregnant women had been kept alive until they had given birth. Her association was therefore looking for children who had been only a few months old at the time of their disappearance or who had been born in illegal centres and then handed over to other families, thereby being deprived of their identities. Representations by her association had led to the adoption in 1985 of Act No. 23511 providing for the establishment of a national genetic databank. As a result of advances in genetic research, it had been possible to test juveniles and establish their filiation with certainty. However, there was still de facto impunity and the path leading to the disappeared juveniles was full of obstacles. Although the Argentine State had at times agreed to cooperate in the search efforts, their success was due mainly to action by her association. Indeed, the authorities and the judiciary were showing little interest in the matter and traffic in children was not treated as a criminal offence in Argentina.

22. Her association therefore requested the Commission to transmit its concerns to the Government of Argentina in order that an end should be put to the sequestration of hundreds of juveniles. It also requested that, as with the police archives concerning the activities of Nazi criminals in Argentina, which had recently been opened, the Government should allow families access to the official files on disappeared persons so that the fate of those hundreds of children would finally be known. That was the only way it could repay a heavy debt towards the Argentine people and mankind as a whole.

23. Mr. BODDENS-HOSANG (Netherlands) said that under agenda item 10 he would comment mainly on the report of Mr. Kooijmans (E/CN.4/1992/17) and the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18). One of the main questions raised in those documents concerned habeas corpus. That procedure was designed to test the legality of a detention or to ascertain the detainee's whereabouts. It existed in many countries, particularly those with an Anglo-Saxon legal system. It was also regarded as an effective weapon against the use of torture. When a writ of habeas corpus was brought swiftly after an arrest, it often helped to prevent irreparable damage. In many countries, however, there were numerous legal and practical difficulties in applying that procedure. In some countries, the law itself put obstacles in the way of effective use of the remedy. In others, it permitted the suspension of habeas corpus during states of emergency, precisely when it was most useful. There were sometimes practical difficulties, too, for example when the person concerned could not obtain

legal counsel. In many countries, furthermore, the police and particularly the military authorities simply refused to cooperate with the civilian authorities. That was undoubtedly the main obstacle, since arbitrary detentions, disappearances and torture generally occurred in places of detention under the authority of the security forces. In such cases, the habeas corpus procedure stopped at the barracks gate.

24. The Working Group on Enforced or Involuntary Disappearances had highlighted all those difficulties and recommended a thorough overhaul of the law and habeas corpus procedures. Likewise, the draft declaration on the protection of all persons from enforced disappearance stressed the need for all competent authorities to have access to all places holding persons deprived of their liberty, as well as to any place in which there were grounds to believe that such persons could be found. Furthermore, the Sub-Commission had submitted to the Commission a draft resolution on the question (see E/CN.4/1992/2-E/CN.4/Sub.2/1991/5) underlining the need to maintain the habeas corpus procedure during states of emergency. His delegation called on the Commission and all Member States to take the necessary steps with respect to the application of that procedure.

25. The problem of impunity arose frequently in the various reports. There were many aspects to be considered, such as the question of amnesties, the competence of military courts as against civilian courts and the resources and physical safety of judges. The Working Group on Enforced or Involuntary Disappearances had requested comments from all States Members of the United Nations on disappearances and impunity and had submitted a number of preliminary considerations as a starting point for their deliberations, its long-term objective being to arrive at a set of recommendations to be presented to the Commission. His delegation hoped that the Commission would give due consideration to that question. It also hoped that the Sub-Commission would advance its discussion of the matter at its forthcoming session.

26. His delegation had furthermore been very interested in the Working Group's conclusions and recommendations on the matter of death squads and civil defence groups, since it was the first time that a United Nations document had addressed the subject in a forthright and detailed manner. Death squads and civil defence groups did not, of course, operate in the same framework, the former acting outside the law and the latter, in principle, within the law. The fact remained, however, that both contributed to human rights violations in various countries.

27. The always elusive death squads could be combated only at the political level and public condemnation of their activities was a prerequisite for credible measures towards their eradication in any given country. Civil defence troops fell into a different category, in as much as a government might have little choice under certain circumstances but to organize a system of self-defence. In that regard, the Working Group had rightly pointed to the need to define a number of minimum criteria as the basis for such a system. That problem certainly related to the question of human rights but since it was on the dividing line between human rights violations and common crimes, it would seem more appropriate for the issue to be dealt with by the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs.

28. It was laudable that governments should readily agree to invite rapporteurs and working groups to visit their countries. That testified to the progress made by the United Nations in monitoring the effective observance of international human rights standards. In that regard, two significant reports were to be considered, one submitted by the Special Rapporteur following his visit to Indonesia and East Timor (E/CN.4/1992/17/Add.1) and the other by the Working Group on Enforced or Involuntary Disappearances after its visit to Sri Lanka (E/CN.4/1992/18/Add.1). Mr. Kooijmans' mission to Indonesia had taken on an added dimension because the massacres in Dili, East Timor, had occurred during his visit and as a result he had personally been able to gather some information on the matter. In that regard, his delegation hoped that Mr. Amos Wako's visit to Indonesia would help to shed more light on those deplorable events. The report on the visit to Sri Lanka was the first United Nations document to deal with the situation in that country. The picture was a very sobering one since the 12,000 registered cases were the highest number ever recorded by the Working Group. Non-governmental violence in the north and south of the country took on dimensions that ultimately threatened the life of the whole nation. The Working Group pointed out that even though a government might have the monopoly on the use of force, such use was circumscribed by underogable rules of international law. The Government of Sri Lanka had violated those rules and had committed serious violations of human rights in its efforts to restore law and order in the country. The authorities had thus created conditions that could lead to excessive and uncontrolled use of force. The competent United Nations bodies must therefore ensure that the Working Group's recommendations in that regard were implemented and it was to be hoped that they would act quickly to keep a close watch on the situation in that country. Peru, for its part, had already been visited by Mr. Kooijmans and the Working Group on Enforced or Involuntary Disappearances but still appeared in the reports submitted to the Commission at its current session. While the Peruvian Government's cooperation with the Working Group was duly appreciated, it was regrettable that similar cooperation had not been extended to the Special Rapporteur on questions relating to torture. Disappearances and torture remained two constant features of the human rights situation in Peru. The Sendero Luminoso organization was continuing its criminal activities but the Government of Peru must refrain from meeting barbarism with barbarism. His delegation was appreciative of the work of the special rapporteurs and was in favour of extending their mandates for a further period of three years.

29. Turning to other matters, he noted that the Working Group on Arbitrary Detention had submitted its first report (E/CN.4/1992/20) to the Commission. In the section dealing with the Working Group's methods of work, his delegation would like a sentence to be added to paragraph 4 indicating that persons with a mandate to represent a detainee could, if necessary, transmit a communication at their own initiative. Furthermore, his delegation wondered whether the Working Group would take account of cases that had ended with the detainee's release when assessing the application of national or international provisions. It hoped that governments would cooperate with the new supervisory mechanism and comply with the procedure known as "urgent action".

30. His delegation did not believe that the drafting of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was a priority. It would first be necessary to learn

from any further experience gained in that regard by the Council of Europe and to work towards ensuring the coherence of the human rights monitoring system as a whole. Lastly, he recalled that his country had recently pledged $50,000 to the United Nations Voluntary Fund for Victims of Torture, a contribution that would undoubtedly be put to good use.

31. Mr. Solt (Hungary) resumed the Chair.

32. Mr. RHENAN SEGURA (Costa Rica) said that the rationale behind the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was that torture could best be combated by having access to places of detention to ensure that it was not practised in them. The system of visiting prisoners of war used by the International Committee of the Red Cross had proven very effective in that regard. His delegation therefore proposed the establishment of a system of visits that would not be limited to prisoners of war but would cover all persons deprived of their liberty. For such a system to be accepted by Governments, it must be based on the principle of cooperation with States and the procedure adopted must be confidential. The aim was not to denounce States but to make recommendations to them with a view to preventing the use of such degrading practices. When his delegation had submitted its draft in 1980, it had requested that its examination should be deferred until consideration of the Convention against Torture had been completed. That Convention had been adopted in 1984. A European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, inspired by the same ideas as the Costa Rican draft, had been adopted in 1987 and had entered into force in 1989. The question therefore arose as to whether an optional protocol was needed. His Government was convinced that the fundamental ideas put forward in 1980 still remained valid. That view was shared by the Special Rapporteur on Torture and by about 40 independent experts who had gathered in Geneva in November 1990 to consider revising the text proposed in 1980 to take account of developments that had occurred in the meantime.

33. The draft which his Government had submitted to the Commission at its previous session (E/CN.4/1991/66), and which had been approved without a vote, did not involve duplication with the Convention against Torture. The Convention, in article 20, allowed the Committee against Torture to visit the territory of a State party if there were well-founded indications that torture was being systematically practised. That constituted a posteriori supervision. The draft optional protocol, on the other hand, was designed to play a preventive role. There might be some duplication with the European Convention against Torture, but the draft being considered seemed worthwhile, as matters now stood, since no other regional convention had been adopted following the European Convention to provide for a universal system of visits, which could coexist perfectly well with a regional system. As soon as 10 States had ratified the protocol, the Committee against Torture would establish a sub-committee for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The proposed system relied on the principle of cooperation. The sub-committee's role would not be to condemn States, but to seek to strengthen the protection of persons deprived of their liberty. It would not be empowered to exercise judicial functions and or be required to determine whether there had in fact been violations of

international instruments prohibiting torture and inhuman or degrading treatment or punishment. Its task would be entirely preventive, consisting in carrying out missions of inquiry and, if necessary, making recommendations.

34. His Government invited delegations and non-governmental organizations to participate in the ad hoc working group that would be appointed to consider the draft optional protocol submitted in document E/CN.4/1991/66. His delegation thanked Mr. Kooijmans once again for his report on torture (E/CN.4/1992/17), whose pessimistic message unfortunately made it even more essential for the Commission to promote the idea of an optional protocol aimed at improving protection against torture.

35. Regarding the problem of arbitrary detention, his delegation wished to thank the Working Group on Enforced or Involuntary Disappearances for its report (E/CN.4/1991/20), which contained a set of criteria that would be very useful for persons wishing to complain about the behaviour of States in that regard. The criteria for determining whether or not a detention was arbitrary, in accordance with the principles set forth in Commission resolution 1991/42, also seemed highly relevant. His Government unreservedly supported the Working Group's recommendations and welcomed the fact that systematic use of enforced disappearance would be treated as a crime against humanity. Lastly, he congratulated Ms. Le Fraper-du-Hellen on the document she had submitted to the Commission (E/CN.4/1992/19).

36. Mr. SNOW (United States of America) said that, even if there would always be individuals prepared to resort to torture or murder, science now offered the means of bringing them to account. The traditional methods of forensic medicine, combined with new and more advanced techniques, made it possible today to solve some cases of disappearances and to determine whether persons had been tortured to death. The basic purpose of a forensic examination was to provide scientific evidence to the courts, as had been done in Argentina in the trial of nine members of the military junta. However, evidence obtained by those means would never be used by the courts in many countries because the will to prosecute was lacking. It was nevertheless to be hoped that those findings, when added to all the data compiled by historians, would refresh human memory and help to prevent such dark episodes from being repeated.

37. Two techniques developed as a result of recent scientific advances could be employed to combat torture and enforced disappearances. The first was genetic fingerprinting, which had been used successfully to apprehend common criminals and could be applied to shed light on cases of disappearances or torture. Work by molecular biologists had shown that it was possible to extract DNA from the bones and teeth of long-dead individuals. That DNA could then be compared with the DNA from victims' relatives to make a positive identification. Second, a technique using remote sensors on satellites to locate mass graves was being developed. Finally, it should not be forgotten that an autopsy, when properly performed, could determine whether a victim had died under torture or had been subjected to other forms of physical abuse. In that regard, to help develop a standard protocol for such examinations, the United Nations had published a manual produced by the Minnesota Lawyers Group, entitled "The Effective Prevention and Investigation of Summary Executions", which described autopsy examination procedures to be followed in cases of questionable deaths in custody. In addition, to provide training and

information, the American Association for the Advancement of Science, together with NGOs, was sponsoring international meetings and courses designed for lawyers, judges and doctors.

38. In its report of the previous year (E/CN.4/1991/20), the Working Group on Enforced or Involuntary Disappearances had recommended that the United Nations should study ways to sponsor teams of forensic scientists that could operate quickly and efficiently in cases of exhumations and in the examination of persons who had died in custody. In conclusion, science must be given a role in the fight against all forms of violence and torture, which caused anguish to entire families and, it should not be forgotten, were a continuing outrage to mankind.

39. Mr. MEZZALAMA (Italy) said that he favoured the implementation of new forms of cooperation with States to ensure that international and national laws were more rigorously respected and to restrict the use of torture more effectively with a view to its complete elimination. Such cooperation would help to ease the task of the Committee against Torture and the Special Rapporteur. Thus, if the Special Rapporteur became acquainted with cases of ill-treatment and notified the Government of the State concerned, asking it to account for them, the State should be required to take all necessary measures. However, the Government in question would have to be accorded a reasonable period of time to reply before the case was publicized.

40. His Government supported Costa Rica's initiative to set up a treaty-based system of periodic visits worldwide. Italy had already agreed to a similar system of visits to prisons and other places of detention, as provided for in the ad hoc European Convention. His delegation therefore supported the proposal to establish a committee of experts and was willing to participate in its discussions.

41. International efforts to combat torture and other inhuman treatment had been fruitful inasmuch as they had contributed to the establishment of numerous international conventions. However, with the progressive internationalization of the crime of torture today, the United Nations and Member States needed to encourage the implementation of an information campaign to acquaint the general public with international action on the question of torture. In that regard, a major responsibility devolved on non-governmental and other independent organizations.

42. The final text of the draft declaration concerning enforced or involuntary disappearances represented a compromise between different philosophies. It was important to emphasize that, for the time being, the draft was not binding. The Committee had, however, taken great care to use the most accurate terminology possible so that the declaration could in future be transformed into a binding instrument without the need for major changes. His Government strongly supported the Committee's conclusions that the text of the draft, together with the Commission's recommendations, should be transmitted through the Economic and Social Council to the General Assembly for adoption.

43. Ms. PARK (Canada) said that even though the United Nations had created a number of important human rights standards and mechanisms, much still remained to be accomplished. Her delegation believed that the United Nations should devote more attention to ensuring that existing human rights standards were complied with. At the same time, it should not be forgotten that democratic government based on the rule of law was the best protection against abuses.

44. The independence of the judiciary and the right to a fair trial were essential aspects of the rule of law. For that reason, Canada firmly supported draft resolution VII, by which Mr. Joinet would be entrusted with the preparation of a report to bring to the attention of the Sub-Commission information on practices and measures which had served to strengthen or to weaken the independence of the judiciary and the legal profession.

45. The right to freedom of opinion and expression was also a key aspect of democratic societies and the rule of law. Canada fully subscribed to the premise of the revised preliminary report by the Sub-Commission's rapporteurs, namely, that the right to freedom of expression should be interpreted extensively, in contrast to the limitations which might be imposed upon it and which should be interpreted restrictively. Her delegation looked forward to cooperating with others to advance the Commission's work in that area. Canada would also introduce a resolution on the question. In that regard, the drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect human rights, originally a Canadian-Norwegian initiative, directly related to freedom of expression. The working group entrusted with that task had completed the first reading text at a pre-sessional meeting in January.

46. Arbitrary detention was another measure incompatible with the rule of law, especially as it was conducive to numerous human rights violations. The disappearance of detainees in particular remained a tragic problem for the international community. Her delegation therefore supported the adoption of the draft declaration on the protection of all persons from enforced disappearance. Such disappearances often followed torture, which was still being practised in virtually all parts of the world. One important measure taken by the community of nations to counter that practice had been the adoption of the Convention against Torture and the establishment of the Committee against Torture. In that regard, her delegation noted that 64 States had become parties to the Convention by 10 December 1991 but that only 28 of them had made the declarations provided for in articles 21 and 22 relating to the competence of the Committee.

47. Implementation of the recommendations of the working groups and the Special Rapporteur would be a major contribution to strengthening the mechanisms established to tackle the problem of human rights violations associated with detention. Those measures, however, would not be enough. The members of the Commission would have to find new ways of enhancing the effectiveness of the structures in place by redirecting or adapting them to cope with today's problems. In that connection, Canada wished to express its support for the Austrian proposal to establish an emergency mechanism which could improve considerably the authority and effectiveness of the Commission.

48. Her delegation would like closer attention to be given in future to the fact that detention more often than not involved members of the most vulnerable groups of society (women, minorities and indigenous peoples). In that regard, Canada welcomed Amnesty International's recent report documenting cases, in all parts of the world, where soldiers, police officers or prison guards had raped or sexually abused women in detention to intimidate or punish them.

49. The hopes and aspirations of the drafters of the Universal Declaration of Human Rights had not yet been realized. The duty of the Commission on Human Rights, therefore, was to protect those rights throughout the world and to ensure that they were respected.

50. Mr. BAIER (Austria), referring to the question of enforced or involuntary disappearances, said that he wished first to underline his country's serious concern about that odious practice and to commend the work accomplished with a view to the adoption of the draft declaration on the protection of all persons from enforced disappearance. Enforced disappearances had tragic consequences both for the victims, who were sometimes unaware of the threat they faced, and for their families, who were often kept in ignorance of the plight of disappeared persons and therefore deprived of any opportunity to help them.

51. His delegation thanked the Working Group for its general report (E/CN.4/1992/18) and its detailed account of the alarming situation in Sri Lanka (E/CN.4/1992/18/Add.1), and joined in the appeal to the Government of Sri Lanka to take more effective steps to prevent disappearances, to investigate them more rigorously, to condemn that practice officially and to protect witnesses of disappearances and relatives of disappeared persons against any form of intimidation or reprisal.

52. Annex III of the general report provided graphs showing the development of disappearances in countries with more than 50 cases transmitted between 1973 and 1990. It must be realized that those already alarming figures did not reveal the true dimensions of the phenomenon of disappearances either worldwide or in specific countries. Indeed, some of the figures in annex III gave the false impression of a positive trend because they indicated a lower number of transmitted cases in 1991 than in 1990 or previous years. Closer study of the report showed, however, that it was the number of outstanding cases that should be a cause for concern, especially in El Salvador, Guatemala, Iran, Iraq and Peru. Austria urged the Governments concerned to provide substantive replies to the Working Group's requests for information on those matters.

53. With regard to intimidation, threats and various forms of reprisal against victims' relatives and human rights groups involved in cases of disappearance, his delegation approved of the action taken by the Working Group, pursuant to Commission resolution 1991/41, under the prompt intervention procedure described in paragraph 25 of the general report (E/CN.4/1992/18). It furthermore commended the Working Group on having extensively studied the question of impunity, which not only contributed to the phenomenon of disappearances but encouraged a wide range of other human rights violations; his delegation therefore welcomed the measures described in paragraph 22 of the report.

54. Concerning the draft declaration on the protection of all persons from enforced disappearance (E/CN.4/1992/19 and Rev.1), his delegation was pleased to note that the Working Group had completed its task within one session and attributed that success to three factors: the common awareness that the problem was one of outstanding urgency, the spirit of compromise and understanding that had prevailed among the participating Governments and non-governmental organizations, and the energetic chairmanship of Ms. Le Fraper-du-Hellen. The drafters intended the declaration not only to facilitate implementation of the Working Group's mandate but also to provide guidelines for all Governments concerned. His delegation would now like the Commission to recommend that the declaration should be transmitted to the General Assembly, through the Economic and Social Council, and hoped that a decision to that effect would be taken by consensus.

55. Mr. GARRETON (Chile), speaking on agenda item 10, said that he first wished to address the question of states of emergency. It appeared from the Special Rapporteur's report (E/CN.4/Sub.2/1991/28/Rev.1) that fewer countries were declaring states of emergency on the American continent, a logical development in view of the strengthening of the democratic process in the region. Paradoxically, although designed to protect democracies from attempts to establish dictatorships, states of emergency were used by dictators to prevent a return to democracy. A second observation prompted by a reading of the report was that states of emergency during the previous year had in fact been declared in situations where the life of the nation, i.e. the democratic rule of law, had been genuinely under threat.

56. His delegation further noted that the consecration of liberty as a human right had been followed by the establishment of a legal means for its protection, i.e. the "right of recourse", which had appeared as early as 1215 in Magna Carta. No declaration of rights today failed to mention the remedy of habeas corpus, because without it the right to liberty would be highly insecure. Article 8 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) and the American Convention on Human Rights all required the incorporation in domestic legislation of a prompt and effective remedy for the protection of personal liberty. The constitutions, codes of procedure and special laws of almost all the Latin American countries regulated habeas corpus in great detail yet curiously enough, in countries where the legal culture inspiring the American countries had developed, the right to an effective legal remedy was not regulated by the legislation and was sometimes not even provided for. The importance of that right and its proper regulation were highlighted in all legal doctrine as well as in the reports of the special rapporteurs on enforced disappearances and states of emergency. The argument that it was impossible for arbitrary arrests or detention to occur in a given country could not be used as a justification for not establishing that remedy in the country's internal law because history showed that such abuses occurred even in countries with the soundest institutions, leaving the victim defenceless. His delegation therefore encouraged countries that had not yet done so to regulate the right set forth in article 8 of the Universal Declaration of Human Rights in their legislation without delay.

5. The Movement of Catholic Students of Portugal had requested Pax Romana to inform the Commission about the exactions committed by the Indonesian Army against the population of East Timor and more specifically to draw its attention to the massacre, on 12 November 1991, of 200 civilians who had gathered in the cemetry of Dili.

6. The situation of political prisoners continue to give concern in Iran where it was common for women and even children to be subjected to torture and ill-treatment.

7. The Episcopal Commission for Social Action of Peru had asked Pax Romana to bring several cases of serious human rights violations in Peru to the attention of the Commission: the murder in January 1991, probably by paramilitary groups, of five people whose bullet-ridden bodies bore marks of torture and blows; the ambush by the Shining Path in January 1991 of a couple and their two children and the administrator of a trout-breeding project and the death of two of them following the brutality they suffered. A delegation of the Justice and Peace organization which had visited Peru from 20 October to 4 November 1991 had prepared a report in which it condemned the armed insurgent groups, the Shining Path and, to a lesser degree, the Tupac Amaru Revolutionary Movement, as being responsible for continuing acts of violence against the civilian population (murders, death threats, forcible recruitment of young people); it also condemned the anti-subversion campaign conducted by the forces of law and order, which had led to murders, arbitrary detention, ill-treatment and disappearances and the climate of terror that prevailed among the population and it noted the deplorable way the administration of justice functioned, characterized as it was by corruption, inefficiency and threats against judges, as well as the inhuman conditions of detention. The delegation concluded that it was essential that the Peruvian Government should restore confidence in the State and secure respect for the Peruvian Constitution and the international human rights instruments, that the virtually total impunity for crimes of terrorism and violations of human rights committed by the State should be discontinued and that the Office of the Attorney General and the judiciary should be allowed to do their work. The Justice and Peace delegation called upon the competent United Nations bodies to study the situation of human rights in Peru and requested the appointment of an independent expert.

8. Mrs. MALIYABWANA (Observer for Zaire), speaking in exercise of the right of reply, said with reference to the statement by the representative of the Movement Against Racism and for Friendship among Peoples, that proceedings had been instituted in connection with the incidents that had occurred on the campus of Lubumbashi University and that the Special Rapporteur on summary or arbitrary executions had been instructed by the Commission on Human Rights to make an investigation. Since his report was not yet available, it was premature to take up the issue. Anyone who wished to speak on the subject should also await the debate of the report of the Special Rapporteur on summary or arbitrary executions, which would provide an opportunity for her delegation to provide once and for all any clarifications.

57. Third and lastly, Chile was very much in favour of giving consideration to a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as had been proposed by Costa Rica since 1980. The draft called for the establishment of a sub-committee of the Committee against Torture which would undertake missions to visit countries adhering to the protocol, after first notifying the State concerned, so that it could take the necessary steps to enable it to carry out its mandate. The protocol was aimed more at precluding than punishing the practice of torture and the procedure it envisaged was therefore preventive in nature. It was essential for the Commission, whose fundamental tasks included improving the mechanisms for the protection of human rights, to study the draft closely and the best way of proceeding would be to entrust its consideration to an open-ended working group.

58. Mr. SANTA-CLARA (Portugal) said that his country was in favour of the adoption of the draft declaration on the protection of all persons from enforced disappearance, having taken part in the drafting process and being aware of the importance of combating that phenomenon, which undermined the most fundamental values of any society based on respect for the law. The text of the draft had taken into account the work and recommendations of the Working Group on Enforced or Involuntary Disappearances concerning the importance of preventive measures, the need to protect people against intimidation or reprisals and the question of impunity.

59. The Commission was also being asked to consider the question of an optional protocol to the Convention against Torture intended to establish a non-judicial system of visits to places of detention by independent experts. Portugal had always recognized the value of such a system based on the principle of cooperation between States; that was why it had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee set up under the Convention had, moreover, recently visited Portugal. The new instrument would benefit from broad discussion and study involving governments, the United Nations and other competent bodies, which could be invited to transmit written comments or participate in an open-ended working group, where consideration might also be given to the European experience in that area and the comments made by the Special Rapporteur on Torture and the Committee against Torture.

60. Lastly, he noted that the importance of the independence and impartiality of the judicial system for the protection of human rights and fundamental freedoms seemed to have been very widely recognized, as could be seen from the report submitted by Mr. Joinet on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1991/30) and the study on the right to a fair trial (E/CN.4/Sub.2/1991/29).

61. The information in the various reports before the Commission nevertheless indicated that the reality did not conform to expectations and that the rule of law often gave way to the rule of fear and oppression. Principles were then forgotten and institutions failed to perform their duties, either because they were prevented from doing so or because they were afraid of reprisals. In particular when the security of the State was threatened, torture was very often considered as a means of dealing with that danger. In those situations, it was not always easy to distinguish an opponent who would stop at nothing

9. Mr. TEITELBAUM (American Association of Jurists), referring to the draft declaration on the protection of all persons from enforced disappearance which was before the Commission (E/CN.4/1992/19, Annex), said that the community of States represented by the Commission on Human Rights had a duty towards victims of disappearance and their families and, consequently, should adopt the draft declaration as soon as possible, preferably at the current session. The Working Group had improved the draft and submitted to the Commission a document which, despite a number of shortcomings, was generally satisfactory. Unfortunately, the Working Group had made a serious mistake which the American Association of Jurists had tried in vain to correct. It had decided to delete the provision relating to universal jurisdiction which had appeared in article 14 of the draft declaration adopted by the Sub-Commission. The American Association of Jurists and 14 other non-governmental organizations had submitted a written communication (E/CN.4/1992/NGO/9) requesting the Commission to restore the original text of article 14.

10. Universal jurisdiction was a complex institution which it would be more accurate to call derogations of the principle of territoriality in the implementation of criminal law. In addition to the two classical derogations of that principle (the establishment of the criminal jurisdiction of a State for an offence committed abroad which damaged national interests or whose perpetrator or victim was a national of the State concerned) there was a third exception, based on the concept of international offence. International conventions had begun to be prepared in the middle of the nineteenth century in order to prevent and punish offences against the law of nations. After the Second World War, the concept of international offence had been extended to war crimes, crimes against peace and crimes against humanity and several international instruments had been prepared, all of which contained exceptions to the principle of territoriality in the implementation of criminal law. Those exceptions, whose numbers were increasing, indicated an irreversable trend in the international protection of human rights and were reflected in many national laws and international treaties. For instance, the Treaty on International Criminal Law signed in 1889 between Argentina, Bolivia, Paraguay, Peru and Uruguay provided for a number of derogations of the principle of territoriality. The Argentine Constitution, the Criminal Codes of Uruguay, Chile, Brazil, Mexico and Venezuela, the Constitution and Code of Criminal Procedure of Colombia all contained various forms of derogations. There was also the example of Title X of the Code of Criminal Procedure of France, Italian criminal legislation and the Criminal Code of Costa Rica.

11. Most of the States represented in the Commission on Human Rights had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provided for derogations of the principle of territoriality in paragraphs 5 and 7. Since the draft declaration on enforced disappearance drew heavily on the Convention, the signatory States which had objected to the introduction of the derogation of the principle of territoriality in the draft might well infringe articles 18, 26, 38 and 52 of the Vienna Convention on the Law of Treaties. However, what was important was that there should not be the least fear that any State might require a person who had committed serious violations of human rights to be granted international impunity simply because he was a national of that State. The logical counterpart of the principle of non-extradition of a national must be the punishment of the offender in his own country.

from people who were merely being critical of the regime or protesting against human rights violations, and the latter were consequently at serious risk. It had to be kept in mind that national security was not an end in itself and that, as pointed out by the Special Rapporteur, it became a caricature of itself when it was achieved at the expense of respect for human rights. The recent death of the Palestinian Mustafa Abdalla Ikawi, reportedly due to torture while under interrogation, was the latest tragic illustration of the potential consequences of the violation of prisoners' basic human rights by the authorities. It had certainly done nothing to improve Israel's security and had cast serious doubt on the Israeli Government's commitment to the Middle East peace process.

62. East Timor was an example of the systematic denial by an occupying Power of a people's right to self-determination and of its other fundamental rights. The Commission was being asked to consider the situation in East Timor in the light of the report submitted by the Special Rapporteur on Torture following his visit to that territory and Indonesia (E/CN.4/1992/17/Add.1), a visit that had been undertaken after numerous and insistent allegations of torture practised by the Indonesian authorities in that occupied territory. Amnesty International in particular had repeatedly expressed concern at the situation prevailing there. Section III of the report on the visit to East Timor spoke for itself and confirmed the complaints made over many years, despite all the restrictions imposed. In paragraph 73 of his report, the Special Rapporteur stated that he could not avoid concluding from the information received that cases of torture were occurring in Indonesia and that in areas deemed to be unstable, such as the non-self-governing territory of East Timor, torture appeared to be practised rather routinely. There could no longer be any doubt that acts of torture and other serious human rights violations had taken place, the military authorities having admitted as much themselves. As the Special Rapporteur further emphasized, only a policy of strict respect for basic human rights could remove discontent (para. 79). That discontent stemmed from the illegal occupation of the territory of East Timor and the denial of the Timorese people's right to self-determination. A political solution to the problem had to be found in order to complete the decolonization process, otherwise the root causes of human rights violations would not be eliminated. That was indeed the message conveyed by Bishop Belo of East Timor, in the letter he had addressed in 1989 to the Secretary-General of the United Nations (A/AC.109/1991).

63. Despite the Indonesian Government's efforts to minimize them, the world knew the seriousness of the tragic events that had taken place in Dili, during the Special Rapporteur's visit, when the Indonesian security forces had fired on a procession moving towards the cemetery of Santa Cruz after a mass to commemorate their earlier victims (paras. 53 to 64 of the report). A national commission of inquiry had been established, under international pressure, but it should be noted that it had been composed exclusively of persons linked to the Government or the military and its preliminary conclusions showed that it had neither appreciated the full scale of the tragedy nor determined the actual circumstances in which it had occurred. The commission's report made no explicit reference to the responsibility of the army and no recommendations about possible charges. It revealed technical shortcomings, since no exhumation or autopsy had been performed. Moreover, it was incomplete because

12. The American Association of Jurists and the 14 other non-governmental organizations were not calling for the restoration of universal jurisdiction in a spirit of revenge but because they considered that the punishment of acts of torture, murder and disappearance was one way for society to affirm its commitment to the essential values of life, freedom and human dignity and because they believed that such violations of human rights must be engraved in the memory of peoples so that they would not recur. That was particularly important at a time when certain Nazi movements were being revived.

13. Needless to say, there was certainly no intention of reopening the debate on the draft declaration at the risk of further delaying its adoption. However, the American Association of Jurists thought that there were enough arguments in favour of retaining article 14 as adopted by the Sub-Commission. The whole world was waiting for the Commission to adopt that draft declaration at its current session and a delegation would hand the Chairman a petition to that effect, containing tens of thousands of signatures.

14. Mr. WAREHAM (International Association against Torture (IAAT-AICT)) said that it was always difficult to raise the issue of the human rights violations committed in the United States, whose propaganda machine selling "United States democracy" was so effective that it obscured the struggles of those people of colour who had been excluded from that democratic process for 500 years. The 40 million Americans of African descent, the 22 million Latinos and the one and a half million indigenous peoples still lived in wretched conditions and America's political prisoners came from their ranks. Their conditions of detention, the conduct of their trials and the length of their sentences clearly demonstrated that they were treated differently from other prisoners who had been found guilty of the same charges. The IAAT already had occasion to draw the attention of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the situation of some of the 200 political prisoners in the United States who came from the black liberation, native American, Puerto Rican and Chicano movements and the human rights abuses to which they were subjected.

15. A group of black political prisoners had published a paper describing the behaviour modification methods applied in the first instance to political prisoners, then to prisoners of colour and, lastly, to the general prison population. The techniques included the removal of prisoners to areas sufficiently isolated to break or seriously weaken emotional ties, the segregation of all leaders, far more lenient treatment of those who were willing to collaborate, the systematic withholding of correspondence, the undermining of all emotional supports and personality invalidation and deterioration techniques as well as the use of drugs.

16. The climate of extreme tension created by those practices was a form of torture that infringed a number of international instruments relating to the treatment of prisoners. The sensory deprivation techniques applied in certain detention centres were an increasingly common form of torture in the United States.

witnesses had been questioned only briefly and some had in any case refused to make statements in a climate of fear that also explained why the wounded had not sought hospital treatment. The national commission of inquiry deemed that the security forces had reacted spontaneously and emotionally when confronted with a crowd described, contrary to all accounts, as belligerent and aggressive, but it nevertheless recognized that the security personnel had exceeded acceptable norms, a finding which suggested that sanctions might have been taken. Yet while many Timorese had been arrested and were still being detained, some facing charges that could attract the death penalty, and while several dozen people had disappeared and many had probably been eliminated in extrajudicial executions, not a single member of the Indonesian security or armed forces had been charged or brought to trial.

64. According to a recent Amnesty International report, the Government and the military authorities had taken steps - arrests or even executions - to make sure that witnesses, human rights activists and independent observers could not dispute the official version of the events. The same report stated that non-governmental human rights organizations had been threatened with legal action, demonstrations had been banned in East Timor and Indonesian newspapers had been formally warned not to print "tendentious" articles.

65. There was clearly a need for an immediate and impartial investigation, under United Nations responsibility, in which international observers could be invited to participate, and for continued monitoring and protection of human rights in the territory with free access being given to international human rights NGOs. His delegation also believed that the Commission should establish a mechanism to follow up the Special Rapporteur's visit to East Timor.

66. Indonesia, like other countries, was forgetting that individuals and peoples had rights which States had to respect and implement and that the international community had a duty to protect those rights under international law. That was precisely why the Commission met. The States represented in the Commission must keep a close watch on the situation of human rights throughout the world and all Members of the United Nations, individually and collectively, had a duty to take concrete steps to find solutions to the problems underlying failure to respect human rights. It was in that spirit that Portugal had stated its readiness to resume the dialogue among all parties directly concerned by the problem of East Timor, without preconditions and under the auspices of the Secretary-General, with a view to reaching a just, comprehensive and internationally acceptable settlement of that question fully respecting the legitimate rights of the Timorese people and in conformity with the principles of the Charter and the rules of international law.

67. Mr. BOREL (International Committee of the Red Cross) said that he wished to describe some aspects of the activities carried out by the International Committee of the Red Cross (ICRC) to assist detainees. In cases of international armed conflict, the Geneva Conventions of 1949 provided ICRC with the mandate to visit prisoners of war and interned civilians held by the enemy; that mandate had been confirmed in 1977 by Protocol I additional to those Conventions. Where an armed conflict was not of an international character, ICRC offered its services under common article 3 of the four Geneva Conventions.

17. The International Association against Torture wished to draw the attention of the Commission to the fact that, despite repeated requests, nothing had ever been done to investigate the situation of political prisoners in the United States and the use of torture. It therefore called on the Commission to appoint a special rapporteur to investigate the situation and requested that all political prisoners held in the United States should be released or granted political asylum.

18. While the signing of the peace accord between the Salvadorian Government and the Farabundo Marti National Liberation Front, in which the United Nations Observer Mission in El Salvador had been largely instrumental was welcome, the international community should maintain its vigilance on the question of respect for human rights in that country. While one could not expect radical change overnight, the continuation of the activities of the death squads, the death threats that human rights leaders continued to receive and the impunity enjoyed by government officials responsible for flagrant human rights violations were cause for concern. The IAAT had given its full support, both inside and outside of El Salvador, to the ONUSAL process, although it was aware of the limitations of its mandate. The primary emphasis it placed on civil and political rights were clear evidence of the continued influence of the United States, whose support for and training of the forces of repression had led to the death of thousands of innocent people. It was extremely important that the Special Rapporteur on the situation of human rights in El Salvador should be maintained in his functions by the Commission. A premature closing of the El Salvador case could only jeopardize the democratic forces at work in that country.

19. Chile was a clear example of what could happen when the Commission decided prematurely to bring a case to a close. That was what it had done two years earlier on the assumption that a restricted democracy would eliminate the use of torture; that had not happened. The Chilean Government had itself admitted to the Committee against Torture that at present torture in that country could be considered as residual rather than institutional. In its report, the Committee against Torture spoke of the difficulty of bringing to trial those involved in the use of torture, given the weight of the Supreme Court in favour of the previous regime. Between September 1990 and September 1991, the IAAT had followed the cases of 16 people tortured during their detention and it had noted that in all cases, the methods had been those used under the previous regime. Despite the complaints to representatives of the present Government, none of the alleged offenders had been charged, reprimanded or brought to trial. Impunity seemed to be the policy of the present Chilean Government.

20. The existence of political prisoners continued to be a matter for concern. Men and women incarcerated under the dictatorship were still in prison and since March 1990 had been joined by others. The IAAT was worried not only about the lack of amnesty for those persons but also about the plans recently made by the Chilean Government to transfer political prisoners to detention centres for ordinary law prisoners, in flagrant violation of international instruments. The IAAT urged the Commission on Human Rights and the other United Nations organs to request the Chilean Government to guarantee the defence of those political prisoners and to release them.

68. In situations not covered by the Conventions, i.e. in cases of disturbances or internal tensions within a country, ICRC, exercising the right of initiative in the humanitarian field as defined in the Statutes of the Red Cross and Red Crescent Movement, could offer its services and ask to visit certain categories of detainees. It was concerned above all, therefore, with persons detained for political or security reasons and not, in principle, with persons held under ordinary law. Even in those cases, however, ICRC acted without questioning the grounds for the detention or the nature of the detainee's alleged crime, whether subversion, terrorism, dissent or some other offence. The ICRC representative would ascertain the conditions of detention and if necessary provide material or psychological assistance for the detainees to whom he was given access.

69. That approach involved negotiations with the detaining authorities which were conditional on registration of the detainees, meetings without witnesses between the representative and the detainees he chose to visit, permission for further visits and access to all places of detention. During and after the visit, the ICRC representative negotiated with the authorities directly responsible in order to obtain the desired improvements in conditions of detention. The ministers concerned, or even the head of State, were informed of the desired improvements by official reports that remained confidential. The entire procedure clearly required the cooperation and good will of the authorities at the highest level. Those authorities, in fact, were not always fully aware of what took place behind the bars of their own prisons and the representative could in such cases provide insight, acting in a confidential manner as an impartial and neutral arbiter between the highest authorities and the detainee.

70. In 1991, the ICRC had made a total of 8,000 visits to 49 countries, assisting 153,000 detainees in some 2,000 places of detention. Most of its activities had been concentrated in the Middle East region, where it had seen 113,000 detainees in 10 different countries, the Gulf war having, of course, considerably increased the need for humanitarian assistance because of the many prisoners taken.

71. Caring for the plight of detainees required substantial resources. The larger the number of detainees, the more Red Cross representatives would be needed to work in a team effort to visit them, prepare reports and where necessary arrange further assistance for the detainees. A very sizeable infrastructure thus had to be put in place. That was the price of ensuring the protection of detainees.

72. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education) said that, at a time when traditional political concepts and ways of thinking were being seriously questioned, it was essential to promote the right to freedom of thought, opinion and expression because only a free system could foster the ideas needed to understand and manage the new national and international society that was emerging. Although democracy was now becoming established throughout the world, it would be wrong to think that such progress was irreversible or that democratization was easy because it was enough to apply the Western experience to other countries. Even if they had the most democratic political systems, the Western countries did not represent a fully-formed model of democracy. One could even go so far as to say that much still had to be done to "democratize the democracies".

73. Democracy was fragile and therefore had to be built on solid foundations by means of an upbringing that appealed to reason and conscience, fundamental characteristics of man according to article 1 of the Universal Declaration of Human Rights, an upbringing in which freedom played an essential role and which presupposed academic pluralism and the autonomy of the educational system vis-à-vis the public authorities. A pragmatic and effective way of achieving that end was to analyse the shortcomings of the Western systems and thereby contribute to the democratization of democracy.

74. To focus the discussion on the agenda item under consideration, he would confine himself to outlining some measures capable of strengthening freedom of opinion and pluralism. Although it was no longer necessary to stress the importance of pluralism in democracy, it should be pointed out that the State had a primary, though difficult, role to play in promoting freedom of opinion and critical thinking, which required a deep ethical commitment on the part of governments as the interests of those who governed could sometimes clash with the public interest.

75. The State, therefore, must first take the necessary legal steps to provide for freedom of opinion and pluralism and in so doing prevent any ideological monopoly in the media, educational institutions or cultural organizations. It must also ensure that such pluralism remained structured and in particular that a balance was achieved between the freedoms of groups and individuals, for example between journalistic freedom of opinion and free enterprise or between academic freedom and the intrinsic character of the educational institution.

76. But, the State must go even further by affording legal protection of freedom of opinion through legal standards and financial assistance. In most democracies there was a need for more effective legal protection against the representatives of authority and positive discrimination in favour of minority groups. The democratic ethos called for consensus rather than policies imposed by the majority and therefore required the establishment of legal mechanisms conducive to the well-ordered participation of citizens that was necessary in the conduct of public affairs.

77. However, such legal instruments would be valueless if they were not backed up by economic measures to guarantee the effective exercise of freedom of opinion in practice. Those measures could include tax exemptions, the encouragement of sponsorship, direct aid to individuals or educational subsidies which, by giving more power to the citizen, also made him more responsible.

78. His organization believed that autonomy, responsibility, participation and a balance of rights were the principles that should guide States in their efforts to strengthen the right to freedom of opinion and expression in democratic systems.

79. Ms. GOODMAN (Pax Christi, International Catholic Peace Movement) said that she was a journalist working for a public radio network in the United States and a survivor of the massacre perpetrated in East Timor by the Indonesian army on 12 November 1991. That day thousands of Timorese had gathered to attend a memorial mass for one of their number killed by soldiers

26. In general, his delegation supported the declaration; it considered, however, that some of its provisions were too specific in the light of the diversity of domestic laws and established basic legal principles which varied from country to country. It was therefore of the view that some of the provisions should be considered as statements of principle rather than as provisions to be strictly implemented. That applied, for instance, to article 8 which established the principle of non-refoulement of a person to another State where there were substantial grounds for believing that he might be in danger of enforced disappearance; however, it was extremely difficult to determine whether such a situation prevailed in the State. In some cases, habeas corpus or a similar mechanism developed by domestic law provided a sufficient remedy and seemed to satisfy the requirements of article 9, paragraphs 2 and 3, as well as article 10. Accordingly, it was not necessary to prescribe stronger provisions.

27. His delegation maintained its position on article 11 and article 13, paragraph 4, of the draft declaration and considered that the enforcement of domestic law satisfy the requirements of article 12, paragraph 1, and article 14. In conclusion, it believed that the declaration could be improved if the diversity of national legal systems and the need for compatibility with the other international human rights instruments were taken into consideration to a greater extent.

28. Mr. BAKHMINE (Russian Federation) said that he considered agenda item 10 to be one of the main issues with which the Commission on Human Rights had to deal, not only because it addressed problems that were of concern to his compatriots but also because it enabled violations of a very large number of fundamental rights to be examined. The greater part of those violations were related to the prison system and for many people a society's degree of civilization was assessed largely according to how it treated individuals who had broken the law. The prison situation had always been painful in Russia, and the legislative measures promulgated recently had notably improved the situation. However, in order to continue that effort, considerable amounts of money were needed, the release of which was precluded by the present state of the country. It was vital to undertake a legal reform which would create genuinely independent courts, with independent and impartial judges and lawyers. The draft fundamental reform of the country's legal system had already been approved and its implementation had begun, but it seemed very likely that all kinds of difficulties would impede the process. The cost of democracy was certainly very high.

29. Currently, a number of Western countries were showing an interest in the reform undertaken and international organizations had offered welcome financial aid. It was obvious that a system based on repression and oppression could not be changed dramatically and moved towards different values in only a few years, but the path of reform had been traced. The new legislative texts that should change prison regulations followed the fundamental international documents, including all the United Nations covenants, declarations and other instruments. Unfortunately, many of those instruments, including in particular the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners were not known within the country, and that was why it was of primary importance to

during a raid against the Catholic Church. They had made their way in a procession to the cemetery in Dili, where they had been confronted by hundreds of soldiers armed with automatic weapons who had opened fire on the crowd without warning. She and another journalist, Allan Nairn, had been kicked, punched and beaten with rifle butts by the soldiers, despite their protests that they were Americans and only doing their job. Before escaping in a jeep, they had seen many bodies strewn on the ground and soldiers killing everyone in their path. On arriving at the hospital, already containing many wounded people, they had learnt that the soldiers had prevented doctors and nurses from going to the scene to help the wounded, with the result that some had died of their injuries for lack of medical treatment.

80. She had been sent to East Timor to report on the visit of a Portuguese delegation, a mission which had subsequently been cancelled. She had been told in interviews with dozens of Timorese that the army had gathered together the inhabitants of every village and had threatened to kill anyone who spoke to members of the Portuguese delegation. Moreover, according to Bishop Belo, the military had repeatedly warned the Timorese that if they spoke, their families would be killed to the seventh generation. The Dili massacre added to a long series of human rights violations in East Timor. She and her fellow journalist had since been officially prohibited by the Indonesian Government from returning to the country. However, that was not the way Indonesia would prevent negative publicity. The answer was for it to stop the killings and torture, which had continued in East Timor even after the massacre of 12 November, and to abide by the two Security Council resolutions calling on it to withdraw from East Timor without delay.

81. Her fellow journalist, Mr. Allan Nairn, to whom she gave the floor, would also testify regarding the situation in East Timor.

82. Mr. NAIRN (Pax Christi, International Catholic Peace Movement) said that he, too, had witnessed the Dili massacre, while on a reporting assignment in East Timor for the New Yorker magazine. Like Ms. Goodman, on the day of the massacre he had seen hundreds of Indonesian soldiers, all armed with M-16 rifles and advancing in a calm and disciplined fashion, fire on thousands of Timorese who had gathered peacefully outside the Santa Cruz cemetery, cold-bloodedly and deliberately shooting at all the people there, men, women and children. His skull had been fractured by a rifle butt. There was no doubt that the massacre had been premeditated and well prepared, since the victims had been trapped between the walls of the cemetery and an army truck positioned to seal off their only escape route. The people in the procession had at no time provoked the soldiers by throwing stones or other objects; the crowd, at that point, had even stopped chanting.

83. After the massacre, the Indonesian Government had issued a report affirming that the Timorese had behaved "savagely" and that the massacre had not been a deliberate act ordered by the Government or the armed forces. No Government respecting the truth could put any stock in such a report unless it ignored the testimony of all the eyewitnesses, both foreigners and Timorese, as well as the statements made by the Commander of the Indonesian Armed Forces, General Sutrisno, who had described the Timorese gathered outside the cemetery as "agitators who had to be shot" and had declared that steps would be taken as soon as the investigation of the massacre had been completed to

assure a legal education and information system. To do that, the Russian Federation looked to the advisory services which the international community could make available to it. It was also necessary to deal with the cases of all those people who had suffered gross human rights violations in the past and in that respect Mr. van Boven's study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms would be very helpful. The Russian Federation had already promulgated a law on the rehabilitation of victims of political repression and another law on the restoration of the rights of peoples subjected to repression.

30. Convinced of the need to increase the efforts of the international community with a view to implementating all the standards for the defence of human rights in the administration of justice, his delegation associated itself with the appeal made in resolution 1991/34 in which the Commission on Human Rights requested all Member States to provide effective legislative and other mechanisms and procedures and to consider providing a procedure equivalent to habeas corpus. It supported the continuation of the activities of the Special Rapporteurs on the question of the right to a fair trial and hoped that all States and specialized agencies, as well as non-governmental organizations, would cooperate with them.

31. It had, unfortunately, to be concluded that the campaign against torture, the beginning of which had coincided with the adoption, in 1975, of the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had not freed mankind from that affliction. The reports of Amnesty International indicated that torture continued to be used in over 100 States, a situation which did not mean that the efforts of the international community were in vain. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment imposed a certain number of obligations on States parties and, moreover, had set up a committee to monitor the implementation of the Convention. The very important work of the Special Rapporteur on questions relevant to torture could also help to strengthen the campaign against that phenomenon. The general condemnation of torture meant that henceforth States that were guilty of it or encouraged it were compelled increasingly to do so in secret. The Special Rapporteur was quite right to assert that there was not enough time to be able to hope to prevent the spread of torture in the next century but that efforts must continue all the same.

32. His delegation had already stated on numerous occasions that it was very much in favour of providing machinery for regular inspections of places of detention as specified for in the draft additional protocol to the Convention against Torture. It would, however, be a fallacy to hope that the States that were most in need of being monitored in that way would sign the protocol which, nevertheless, would be the only guarantee of effectiveness.

33. The finalization by the Working Group of the draft declaration on the protection of all persons from enforced disappearance was gratifying and all delegations should be invited to support the draft.

"wipe out all separatist elements who had tainted the Government's dignity". It should be pointed out that there was no justification for describing the Timorese as separatists, given that Indonesia's occupation of East Timor had been condemned by the international community and that the Security Council had recognized their right to self-determination and had called on Indonesia to withdraw from the territory without delay. Since Indonesia's invasion of East Timor in 1975, nearly a third of the Timorese population had disappeared. It was clear that the Indonesian Government was in fact pursuing a policy of genocide with the complicity of countries such as the United States, the United Kingdom and other States, which were supplying it with arms, as well as Japan, the Netherlands and Australia, whose financial support enabled the Government openly to defy the law and the Security Council. If the Commission genuinely wished to carry out its mandate, it would have to take decisive action to deal with the situation in East Timor.

84. Mr. ROA KOURI (Cuba), speaking in exercise of the right of reply, said that he was concerned at the way some non-governmental organizations which had consultative status with the Economic and Social Council were abusing their status in the Commission. The International Association for the Defence of Religious Liberty, for example, had let itself be represented by a certain Miguel Angel Loredo, known to all Cubans as none other than the priest responsible for hiding in his church the terrorist who had attempted unsuccessfully to hijack a civilian aircraft and had then killed one of the crew members and a guard. Mr. Loredo was now merely repeating lies prepared by the CIA. No one could be moved by the crocodile tears he was shedding over the death sentence imposed on the leader of a counter-revolutionary group that had infiltrated Cuba from the United States with the declared aim of sowing blind terror in the country by placing bombs in public places, killing women, children and old people. It came as no surprise, moreover, that he should express indignation over the public prosecutor's call for the death penalty against Miguel Almeida Pérez and René Salmerón Mendoza, who had not only attempted to leave the country illegally on 9 January 1991 from the Tarará naval base near Havana but, after failing in their attempt, had killed three guards at the base, a fact that Mr. Loredo had carefully avoided mentioning. Mr. Loredo was indeed nothing but a protector of killers and in pleading their case before the Commission he had shown open contempt for its guiding principles and objectives and had abused the prerogatives that NGOs enjoyed by virtue of their consultative status.

85. In conclusion, he assured the Commission that members of all religions, including the followers of religions of African origin, exercised in full their right to freedom of religion in Cuba, as had been attested by the World Council of Churches and numerous Cuban and foreign public figures.

86. Mr. SIMMONS (International Indian Treaty Council) said that the indigenous peoples of the western hemisphere had been reduced to the condition of prisoners of war ever since 1492, their natural world transformed into a "political prison" guarded by the anti-natural forces. Their indigenous status made them "legal aliens" marginalized and persecuted in their own countries. Today there was a very high percentage of indigenous prisoners within the colonial penal systems, where racist guards inflicted cruel and inhuman treatment on them. All those who sought to protect their sacred places and traditional way of life were being arrested and imprisoned as criminals, but in fact they were political prisoners, prisoners of war.

34. The defence of human rights during a state of emergency was of special importance and his delegation was disturbed at the proclamation of a state of emergency, in one form or another, in a number of regions of the former USSR. The absence of detailed information on the regimes thus established was incompatible with the International Covenant on Civil and Political Rights. The work of the Special Rapporteur and the updated list of countries which had proclaimed, extended or terminated a state of emergency made good a deficiency in that regard. In Russia, a law on the state of emergency had been drawn up with great care and its contents were consistent with international standards. Its implementation would call for substantial efforts from the Government. In any event, the Russian Federation was perfectly ready to cooperate with the Special Rapporteur on states of emergency.

35. The right to freedom of belief and expression had a very special place in human rights. The internationalization of all forms of communication as well as the realizations of the scientific and technological revolution made it virtually impossible to conceal the truth about the violation of those rights by any State. The major information organs, sometimes called the fourth power, were often ineffective and isolated when confronted with violations of the right to freedom of belief and expression. To be sure, limits had to be set, but they ought to be specified unequivocally in legislation and none should be incompatible with the international rules. The Russian Federation had recently adopted a law on the press which, despite all its shortcomings, had provided a legal foundation for the freedom of information, thus marking a step forward along the road to the constitution of an independent fourth power. In view of the importance of that issue, his delegation fully supported the efforts of the Sub-Commission and in particular those of its Special Rapporteurs, Mr. Joinet and Mr. Türk.

36. Every State had a duty to protect its citizens against arbitrary arrest, enforced disappearance and states of emergency. However, the degree of civilization achieved by society was also determined by the impartiality of justice and the intangibility of the principle of presumption of innocence. Unfortunately, very many of countries were still far from implementing those important principles. Cases of torture, cruelty, arrest of individuals whose only fault was to have believed in the ideas proclaimed in the United Nations were still too numerous and the Commission on Human Rights must keep that in mind.

37. Mr. PAZ (Argentina) said that torture and phenomenon of enforced and involuntary disappearances were two crimes which, by their persistence, their widespread character and their seriousness called for very special attention from the Commission on Human Rights. The challenge which constitutional Governments had to meet was not simply to restore the rule of law and to consolidate democracy but also to adopt the legal and institutional framework appropriate to ensure that events such as Argentina had lived through would never recur.

38. It was true that the number of complaints of new cases of torture had increased in comparison with previous years, but his delegation, like the Special Rapporteur on questions relevant to torture, thought that the increase did not necessarily mean that there was an increase in the use of torture but

87. The International Indian Treaty Council wished to draw particular attention to three cases of judicial discrimination against Indians. The first concerned the situation of a Yupik Eskimo, Steve Kohler, who had been incarcerated on 17 January 1992 on various charges relating to a fishing incident in Bristol Bay, an area traditionally fished by the Yupik peoples. Some information indicated that Mr. Kohler was being kept in prison because of his unwillingness to sign documents recognizing the jurisdiction of the State of Alaska over all matters relating to the subsistence rights of the sovereign indigenous peoples of Alaska. Mr. Kohler was therefore a political prisoner under the covenants of international law.

88. The second case concerned Eddie Hatcher, a Tuscarora Indian of North Carolina, one of the poorest states in the United States, who in February 1988 had occupied the offices of a local newspaper to draw attention to the difficult conditions of life in that state. Although acquitted by the federal court in Raleigh, North Carolina, and despite the United States constitutional guarantee against double jeopardy, Mr. Hatcher had been re-indicted by a North Carolina state court seven weeks later and incarcerated. He had now been in prison for nearly three years, where his life was in danger; he had been stabbed on 18 September 1991 by another inmate, who claimed to have acted on the instructions of prison officials who had in exchange promised him a transfer and certain privileges.

89. Lastly, the case of Leonard Peltier, an American Indian Movement activist convicted on false evidence and sentenced to life imprisonment for the murder of two FBI agents in 1975 after a trial marred by irregularities, was a flagrant example of violation of the right to a fair trial. Mr. Peltier's numerous appeals and motions for a new trial had all been denied. He was clearly being held for purely political reasons and unless pressure was brought to bear on the United States Government for his release, he and many other political prisoners like him would remain in prison indefinitely. Thirty-three members of the United States Congress had, moreover, expressed their concern about the unfairness of the proceedings by which Leonard Peltier had been extradited from Canada, tried, convicted and sentenced. The International Indian Treaty Council urged the Commission to refer his case to the Sub-Commission's two Special Rapporteurs entrusted with preparing a study on the right to a fair trial.

90. Lastly, the International Indian Treaty Council wished to draw the Commission's attention to the worsening conditions of detention of Indian and Chicano inmates in the Montana State Prison at Deer Lodge. Those prisoners had been subjected to abuse and racial discrimination by penitentiary personnel since the disturbances that had followed the suicide on 16 August 1991 of an Indian prisoner, Bill Brown, who had been left to die by the prison guards. It was important to realize, as those examples illustrated, that there was a pattern of discrimination against Indian and Chicano peoples within the United States criminal justice system.